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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B5



DATE: **AUG 03 2011** OFFICE: TEXAS SERVICE CENTER

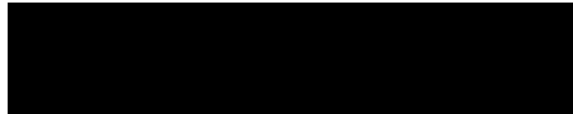
FILE:

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an assistant [REDACTED]

The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and supporting exhibits.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer --

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on January 18, 2010. In an introductory statement, counsel stated:

[The petitioner] is [REDACTED] in the School of Business at [REDACTED]. His specialty is Logistics and Operations Management. He has Five Peer reviewed publications, all in top journals, five articles in preparation, a technical report to the Quebec Ministry of Transport, Supply Chain Research Group[,] three book chapters, and 14 presentations. He presently

serves on the State of [REDACTED] treatment. (His subspecialty is Cruise Ship Operations and Logistics. . . .) He has won numerous awards. . . . He was session chair at a major conference.

[The petitioner] is an extraordinary researcher and one of the upcoming stars in the field of operations and supply chain management research. . . . He is frequently sought out as an analytical and methodological expert and is a frequent collaborator of top investigators in the field of operations management. . . .

[The petitioner's] research focus is on two main areas; first, he looks at the management of global supply chains for dynamic moving endpoint. His previous field of study was on the re-supplying of large cruise ships around the world. Ramifications of his findings will lead to his next step in that stream of research, which will look at improving military supply chain efficiency as well as humanitarian aid delivery. . . . His second research stream is on the use of real time operations management technology and the operations managers' cognitive processes. His research on the topic has important impact on understanding decision-making under pressure and users' cognitive load.

Counsel states that a waiver of the job offer requirement is in the national interest because the petitioner "is [REDACTED] Professor, who was hired on the basis of a national search," and "no one really wants to wait several years" for a labor certification. Counsel did not elaborate as to how this shows that a waiver of the job offer requirement is in the national interest.

The petitioner submitted what counsel described as "[l]etters of endorsement from top experts in the field of Operations Management." Professor [REDACTED]

I have known [the petitioner] since December, 2008 when I offered him a position as an assistant professor (tenure track). . . . He stood out from the other applicants, and it was clear to us that his research expertise and commitment to teaching were critical qualities for the ongoing development of our school. . . . I have found him to be highly motivated in both his research and teaching endeavors. . . .

One year after completing his PhD, [the petitioner] has five publications in leading journals and eight more articles under development. He also has three book chapters contracted. This level of success clearly indicates the rigor and relevance of [the petitioner's] research. . . .

[The petitioner] also shows evidence of excellent teaching potential. . . . Here at the school of business, his knowledge and expertise are essential to our MBA program. We have just launched a Supply Chain Management Track in our MBA program and

[the petitioner's] specific expertise in operations and supply chain management is critical to the success of the program.

Montreal School of Business, where the petitioner earned his doctorate, claimed that the petitioner "is now one of the field's leading experts on the cruise ship industry." asserted that the petitioner's "research has had and will continue to have a significant impact in both the business and academic worlds."

taught a seminar to the petitioner there. She stated: "There are very few in-depth studies of the impact of supply chain management technologies or of the specific challenges experienced in the cruise ship supply chains." stated that the petitioner's doctoral "thesis has a potential to result in a great number of publications," and that the petitioner "has already published some interesting work."

assistant professor at the described his collaboration with the petitioner:

In his research [the petitioner] consistently provides innovative solutions to critically important managerial issues. For example, our co-authored paper that appeared in Decision Support Systems in 2007 was innovative in being one of the first in the field to address team dynamic theory in real time decision-making. We are currently developing a number of papers together, all trailblazing in the domain of decision making and technology interface which have strong implications for safer transportation systems and increased efficiency in military operations.

invited the petitioner to contribute a chapter to "the book, Maritime Economics, that I am editing. . . . [The petitioner] is among a few researchers in the world who is qualified to write on the business aspect of the cruise industry."

associate professor and director of the met the petitioner at a 2005 meeting. stated: "As a young researcher, [the petitioner] is beginning to establish a reputation as a valued colleague and skilled methodologist" whose "publications have recognized [*sic*] him as an outstanding young researcher in the field."

associate professor at did not state how he knows the petitioner. He referred to "interactions with" the petitioner but did not elaborate. stated that the petitioner is "an extraordinary researcher and one of the upcoming stars in the field of operations and supply chain management research."

an assistant professor at the has met the petitioner at several professional meetings. stated that, although the petitioner only recently completed his doctorate, his "papers have a significant impact on future research in the field. In fact,

they have already had that impact.” [REDACTED] stated that one of the petitioner’s articles “ranked in the top 25 most downloaded paper[s] in the journal for eight straight months. This is a clear indication of the citations it is likely to generate in the coming years with already five citations in one year.”

The petitioner submitted copies of his articles, and a printout from the Google Scholar search engine (<http://google.scholar.com>) showing five citations of one article and three citations of another. For the first article, two of the five citations are self-citations by the petitioner or his co-author [REDACTED]. For the second article, all three citations are in articles by [REDACTED] and two are self-citations by the petitioner. That leaves three apparently independent citations, two of which involve the same author (one [REDACTED]).

A number of witnesses mentioned the petitioner’s receipt of two [REDACTED] awards. A letter from an HEC Montreal official indicates that the award is for “students who have accepted or published an excellent article in a good journal with peer review.” At best, this student award might count toward a claim of exceptional ability in the arts, sciences or business. Specifically, the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F) states that evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations can contribute to a finding of exceptional ability. Because exceptional ability is not *prima facie* grounds for the national interest waiver, partial evidence of exceptional ability, such as the award, is not strong evidence for granting the waiver.

The record confirms the petitioner’s invitation to participate on the Alaska Science Advisory Panel for Cruise Ship Wastewater Treatment. The Alaska Department of Environmental Conservation put out a call for “persons knowledgeable in naval architecture, marine engineering, shipping economics, finance, and/or business operations to advise the State on economically feasible cruise ship wastewater treatment technologies.” A department representative contacted the petitioner upon the recommendation of [REDACTED].

The petitioner submitted copies of various communications relating to internships, grants, publishing, and other matters, but did not show how these materials distinguish him from others in his field.

On February 10, 2010, the director issued a notice of intent to deny the petition, stating that the petitioner had not established the impact or influence of his work in his field. In response, counsel questioned the USCIS adjudicator’s grasp of “very basic facts about economics” and stated that the cruise “industry resulted in \$19,070,000,000.00 (\$19 trillion) in direct spending in 2008.” The figure provided is just over \$19 billion, not \$19 trillion.¹

¹ The annual gross domestic product of the entire United States is about \$14 trillion. Source: <http://www.census.gov/compendia/statab/2011/tables/11s0666.pdf> (printout added to record July 20, 2011).

The petitioner submitted a letter from [REDACTED] who stated that the petitioner "was recruited to join the State of Alaska Department of Environmental Conservation Cruise Ship Wastewater Science Panel (WSP) because of his expertise in the cruise industry and knowledge of environmental issues facing the industry in Alaska." Clearly, the agency found the petitioner to be qualified to serve on the panel, but there is no evidence that the officials responsible for assembling the panel had heard of the petitioner or his work before [REDACTED] brought his name to their attention. Also, the record does not show that the agency selected the petitioner for the panel based on his reputation in the field. Rather, a message from state official [REDACTED] indicated that the beneficiary's "maritime and business background is of interest to us" because "only . . . one or two others on our Panel" had comparable experience. In other words, the key appears to have been the petitioner's "actual seagoing experience" and familiarity with the subject matter, rather than any particular results that the petitioner had achieved through past research or publications. The evidence shows that the petitioner is qualified to serve on the panel, but this is not inherently a hallmark of eligibility for the national interest waiver.

The petitioner submitted printouts showing articles by the petitioner among the "Top 25 Hottest Articles" in *Tourism Management* for the fourth quarter of 2008 and the first quarter of 2009, and in the *International Journal of Production Economics* for the fourth quarter of 2009. As previously quoted, [REDACTED] had claimed that the inclusion of the petitioner's articles in these lists "is a clear indication of the citations it is likely to generate in the coming years." The record does not support this assessment. Review of these printouts shows lopsided inclusion of the most recent articles.

Of the "Top 25 Hottest Articles" in the *International Journal of Production Economics* from October to December 2009, seven are from the two most recent issues (November and December 2009). Two other listed articles show no dates or page numbers, which appears to indicate that the articles were available online but not yet published in print.

The October-December 2008 list from *Tourism Management* shows volume and issue numbers but no publication dates. The most recent issue represented was volume 30, issue 1, which the record elsewhere reveals to be the February 2009 issue. One of the listed articles shows no volume, issue, or page numbers. Twenty-one of the remaining 24 articles were published in volume 29, issues 4 through 6, or volume 30, issue 1. Only two articles predate volume 29. The petitioner's listed article is one of eleven listed articles from volume 30, issue 1. The other ten articles from that issue account for 97 of the first 108 pages of that issue. It appears, therefore, that almost every article in volume 30, issue 1, appears in the "Top 25 Hottest Articles" for October-December 2008. This is, again, consistent with initial demand for newly-published articles.

The trend continues on the January-March 2009 list from *Tourism Management*. Seven articles (including the petitioner's) are from volume 30, issue 1; nine are from volume 30, issue 2 (April 2009); and five showed no dates or volume information. Only two articles predated volume 29.

It is not surprising that new articles would see significant activity at the time of publication, when the field is first familiarizing itself with the material. It is, therefore, not particularly remarkable that

the petitioner's articles appeared on the lists at the time of publication; many other articles in the same issues did the same. Inclusion in the list, therefore, appears to say more about the articles' timeliness than about their impact. It certainly does not show that any given article by the petitioner stands out from other articles in the same issue, because many such articles are on the lists as well.

Because the lists focus only on three-month periods, they do not establish any longer-term trends that might distinguish articles that are influential from articles that are simply new.

An updated citation list from Google Scholar shows a slight increase in citations compared to the previous list. One article, previously showing five citations, shows six on the updated list. The second article, previously with three citations, now shows four. A third article, originally uncited, shows two citations in the updated list. The petitioner did not identify the four new citing articles, and therefore it is not clear whether the new citations continue the previous pattern in which [REDACTED] and the petitioner himself produced most of the citations.

The director denied the petition on April 14, 2010. The director acknowledged the substantial intrinsic merit of the petitioner's field, but found that the petitioner's work lacks national scope because "the beneficiary will work primarily as a professor at a University. His benefit will primarily impact the students who attend." The director acknowledged the witness letters, but found that the letters did not show the impact or scope of the petitioner's contributions to his field. The director found that "the petitioner had only co-authored a few articles" with a minimal citation record. The director noted that the petitioner may have a promising career before him, but concluded that the petitioner had not shown that this promise had, so far, translated into demonstrably important and influential work.

The AAO disagrees with the director's finding that the petitioner's work lacks national scope. While classroom instruction is geographically limited, the petitioner has produced research for publication in national and international journals, thereby disseminating his work over a larger area. There is nothing location-specific about the petitioner's overall work, and indeed the very nature of the maritime industry, both for cruise ships and other vessels, involves travel over great distances. The AAO therefore finds that the petitioner's research work is national in scope.

On appeal, counsel called the director's decision "so poorly decided, so sloppy, and with so little relationship between the decision and the material submitted that it has already been submitted to the Ombudsman. A formal complaint will also be issued to CIS as well as through various congressional offices." The procedure to dispute an adverse decision is through the appeal process, and the AAO will give the appeal appropriate consideration. The claim the counsel has filed or will file additional complaints through other channels has no effect on the outcome of the AAO's appellate decision.

As an example of the "sloppiness" of the decision, counsel notes that the decision refers to "critical care research," which is not the petitioner's field of endeavor. The AAO acknowledges this error, but also acknowledges that the rest of the decision is fully consistent with the record. It appears that

this reference to “critical care research” is the result of copying language from one decision into another. The result is a factual error, but in context this is a minor, non-prejudicial error, comparable to counsel’s own error in confusing “billion” with “trillion.”

Counsel repeats the prior assertion that “[t]he decision was made to forego the Special Handling Procedure, since the Department of Labor’s PERM section is totally dysfunctional, and typical PERM cases are taking two years or more for college professors.” This is not a basis for the national interest waiver, it is an expression of frustration regarding (unsubstantiated) complaints about the labor certification process. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 223.

Counsel protests: “the denial letter itself FAILS TO MENTION ANY OF THE EVIDENCE SUBMITTED, OTHER THAN REFEREE LETTERS” (counsel’s emphasis). This is a false claim. Indeed, counsel contradicts this claim later in the appellate brief, acknowledging that the director noted the petitioner’s submission of “articles that have been published in scholarly journals” and evidence of citation of those articles. The director did not discuss these materials at great length, but it is simply not true that the director “fail[ed] to mention” them at all, and counsel clearly knew that this was not true.

Counsel protests that USCIS adjudicators “apparently judge all petitions on the basis of numbers of citations.” Citations are not the only basis for evaluating a researcher’s work, but they have the advantage of being an objective measure that exists independently of the petition; they are not tailored to meet one particular researcher’s needs, as is unavoidably the case with witness letters specially solicited to support a petition. Apart from citations, the petitioner might, for example, show that major cruise lines have significantly altered their practices as a result of his published findings or recommendations. The petitioner has not done so, nor has he shown that his work has had any significant practical impact on the cruise ship industry. The petitioner’s witnesses are all at the academic level. If the petitioner’s expertise focuses on the cruise ship industry, and that industry (as opposed to academia) has not acted on his work in a demonstrable and meaningful way, then it is hard to say that his work has had any impact at all.

Regarding the petitioner’s citation history, counsel states: “it would be interesting to know how the examiner is able to state that 14 citations are not many. What standard is he using?” The regulation at 8 C.F.R. § 103.3(a)(1)(i) requires the petitioner to explain the grounds for denial, but the burden is not on the director to prove that the petitioner’s evidence is insufficient. Rather, the burden is on the petitioner to show that he qualifies for the benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361. The AAO acknowledges counsel’s observation that some fields may produce more citations than others, but the petitioner cannot simply produce a handful of citations and challenge USCIS to show that the numbers are insufficient.

Counsel cites *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), stating that the court did not permit “novel substantive or evidentiary requirements” beyond those found in the regulations (*Id.* at 1121). The *Kazarian* decision involved a petition for an alien of extraordinary ability under section 203(b)(1)(A) of the Act. The implementing regulations for that classification include, at 8 C.F.R. § 204.5(h)(3), a list of ten evidentiary criteria. A petitioner seeking that classification must meet at least three of those ten criteria. The court, in *Kazarian*, held that USCIS adjudicators could not modify those requirements. In this proceeding, there is no comparable list of qualifications. The regulation at 8 C.F.R. § 204.5(k)(4)(ii) provides for the national interest waiver, but is entirely silent as to the requirements for it.

Counsel acknowledges that *Kazarian* concerns a different immigrant classification, but asserts that the logic applies in this proceeding. Counsel claims that, instead of the list of ten criteria of extraordinary ability, “[t]he standard for NIW [national interest waiver] is ‘exceptional ability.’ The mere fact that [the petitioner] was selected as tenure track faculty places him in the category of exceptional.” Counsel’s argument collapses at this point. Nothing in the statute, regulations, or case law supports counsel’s claim that “[t]he standard for NIW is ‘exceptional ability.’” As noted in *Matter of New York State Dept. of Transportation* at 218, section 203(b)(2)(A) states that the classification consists of aliens of exceptional ability “whose services . . . are sought by an employer in the United States.” This is the job offer requirement. Because counsel is demonstrably incorrect that exceptional ability implies eligibility for the waiver, the AAO need not devote detailed discussion to counsel’s erroneous claim that the beneficiary’s tenure-track appointment “places him in the category of exceptional.” The AAO notes that the regulation at 8 C.F.R. § 204.5(k)(3)(ii) includes a six-item list of criteria for exceptional ability. It is to this list that the *Kazarian* decision would most directly apply, but counsel does not explain how the petitioner’s qualifications compare to the items on that list.

Counsel claims that the petitioner “already has more articles published than some tenure[d] professors and has exceeded tenure requirements in his field at many institutions.” The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director, in the denial notice, stated that the letters in the record are from witnesses who “know the petitioner professionally, personally, or have collaborated with him.” Counsel notes that several witnesses have “no direct connection” to the petitioner, having encountered him in person only at professional conferences. Counsel states: “Attending the same academic conferences do[es] not make professors friends or colleagues.” This is true enough, but it does not lead to a finding that these letters are compelling documentary evidence in their own right.

The opinions of experts in the field are not without weight and the AAO has considered them above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive

evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The independent letters that counsel emphasizes primarily contain vague claims of contributions without providing specific examples of how those contributions have influenced the field. A number of the witnesses identify articles that the petitioner has written (or the journals that carried those articles) but say little about the actual effect those articles have had, either in theory or in practice. A common refrain is that the petitioner is a "promising" researcher, but promise is not a track record of demonstrable achievement. The independent references did not establish their own reliance on the beneficiary's work, and the petitioner also failed to submit specific corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

Counsel again notes the petitioner's student paper awards, and states that the petitioner "more recently has received the faculty scholar of the year for outstanding research by a professor. This award is the highest honor the university could give to a professor." Exhibits submitted on appeal show that the petitioner received this award in late April 2010, more than three months after he filed the petition. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. §§ 103.2(b)(1), (12). Therefore, subsequent events cannot cause a previously ineligible alien to become eligible after the filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Even then, this award, like the previous awards, at best establishes partial support for a claim of exceptional ability under the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F).

Counsel asserts that the director should have given greater weight to the petitioner's involvement on the Alaskan panel discussed earlier. The petitioner submits a March 25, 2010 letter from [REDACTED] solicited for the response to the notice of intent to deny but not submitted at that time. [REDACTED] stated that the petitioner "was specifically recruited for his expertise by the Alaska Department of Environmental Conservation for a special advisory panel on wastewater treatment options for cruise ships." The tone and content of [REDACTED] letter is similar to those of [REDACTED] letter, submitted previously. Neither [REDACTED] claim to have been personally involved in the recruitment or selection of panel members, or to have discussed the selection process with anyone involved in those decisions. Therefore, their letters are not first-hand evidence of the significance of the petitioner's selection for the panel.

The record establishes that the Alaskan government invited the petitioner to join the panel after [REDACTED] recommended him, and the record shows that the inviting agency found the petitioner's experience to be useful for the panel's mandate. Other than that, the record contains little evidence about the significance of this appointment. Counsel simply scolds USCIS for not presuming the matter to be of the highest importance.

For all counsel's complaints about the "sloppiness" of the director's decision, counsel has not put forth a coherent claim for a national interest waiver in this case. Instead, counsel has described the petitioner's credentials and professional achievements, while protesting that the labor certification process would take longer than the petitioner would care to wait.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.